

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Alfredo Gonzalez	Team: Squad #7	CCRB Case #: 201501251	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Saturday, 02/21/2015 12:01 AM	Location of Incident: § 87(2)(b)	Precinct: 44	18 Mo. SOL 8/21/2016	EO SOL 8/21/2016	
Date/Time CV Reported Sun, 02/22/2015 3:49 PM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Sun, 02/22/2015 3:49 PM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. POM Wilfredo Benitez	15506	947459	044 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Diego Jimenez	14777	949142	044 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Wilfredo Benitez	Discourtesy: PO Wilfredo Benitez spoke discourteously to § 87(2)(b)	§ 87(2)(b)
B.POM Wilfredo Benitez	Force: PO Wilfredo Benitez used physical force against § 87(2)(b)	§ 87(2)(b)

Case Summary

On February 21, 2015, at approximately 12:01 a.m., inside § 87(2)(b) in the Bronx, § 87(2)(b) was in the process of exiting the building when he was stopped by PO Diego Jimenez and PO Wilfredo Benitez in the building's lobby. The building is a Clean Halls Building. PO Benitez began asking § 87(2)(b) whether he was a resident of the building. At one point during their exchange, PO Benitez called § 87(2)(b) a "fucking liar" (**Allegation A**). During this time, § 87(2)(b) was holding his cellphone in his left hand. As he attempted to dial out, PO Benitez grabbed § 87(2)(b)'s collar in order to stop him. § 87(2)(b) believing that PO Benitez was attempting take his phone, pushed PO Benitez's hand away. Immediately after, PO Benitez struck § 87(2)(b) above the left side of his lip, causing a laceration (**Allegation B**). After being placed in handcuffs, and while the officers were walking him to the RMP, PO Benitez called § 87(2)(b) a "motherfucker" and told him that he should not have "fucking" resisted (**within Allegation A**).

Mediation, Civil, and Criminal Histories

This case was ineligible for mediation. A notice of claim inquiry was submitted on March 16, 2015, and will be added to the case file upon its receipt. § 87(2)(b)
(encl. H1-H12).

Civilian and Officer CCRB History

- This is § 87(2)(b)'s first CCRB complaint (encl. A4).
- PO Benitez has been a member of the NYPD for six years. He has had ten CCRB allegations made against him, six of which include allegations of force or discourteous language, but none of which were substantiated (encl. A3).

Potential Issues

§ 87(2)(b) informed the undersigned that he had spoken with the Superintendent of the building and was told that there was no video footage available in the lobby of the building because the camera was not functioning at the time of the incident (encl. I2).

Findings and Recommendations

Explanation of Subject Officer Identification

§ 87(2)(b) stated that it was PO Benitez that initiated the stop, punched him, and primarily interacted with him while PO Jimenez observed (encl. C4). § 87(2)(g)
§ 87(2)(g)
§ 87(2)(g)
§ 87(2)(g)

Allegations Not Pleaded

- **Abuse: Officers stopped** § 87(2)(b)
On March 10, 2015, the NYPD issued a FINEST Message altering the policies related to the Trespass Affidavit Program. The message stated that officers are no longer allowed to "approach a person merely because the person has entered, exited, or is present near a building enrolled" in the program, and may only approach and question an individual if the officer has "an objective credible reason to do so" (encl. A1-A2). § 87(2)(g)

§ 87(2)(g)
[Redacted]
[Redacted]
[Redacted]
[Redacted]

Allegation A – Discourtesy: PO Wilfredo Benitez spoke discourteously to § 87(2)(b)

It is in dispute whether PO Benitez spoke discourteously to § 87(2)(b)

In his in-person statement, § 87(2)(b) alleged that PO Benitez called him a “fucking liar” after he was unsatisfied with the answers § 87(2)(b) provided. After being placed in handcuffs, § 87(2)(b) further alleged that PO Benitez called him a “motherfucker” and told him that he should not have “fucking” resisted (encl. C4).

PO Benitez acknowledged that it was he who interacted and spoke with § 87(2)(b) but he denied using any obscenities against him (encl. E5-E6). PO Jimenez denied that PO Benitez used obscenities against § 87(2)(b) (F7-F8).

§ 87(2)(g)
[Redacted]
[Redacted]

Allegation B – Force: PO Wilfredo Benitez used physical force against § 87(2)(b)

It is in dispute whether an officer used physical force against § 87(2)(b)

In his in-person statement, § 87(2)(b) alleged that after pushing PO Benitez’s hand away, the officer struck him in the face one time. The strike had enough force to draw blood. § 87(2)(b) stated that he did not offer any resistance during their interaction (encl. C4).

PO Benitez denied ever striking § 87(2)(b) in the face and stated that § 87(2)(b) behaved calmly during the entirety of their interaction and was compliant with all of his commands (encl. E5-E6). Although PO Jimenez’s testimony differs in regards to the extent of his interaction with § 87(2)(b) it confirmed PO Benitez’s assertion that § 87(2)(b) was calm and offered no resistance during the entirety of their interaction. PO Jimenez also denied that PO Benitez struck § 87(2)(b) in the face (encl. F7-F8). Although § 87(2)(b) admitted pushing PO Benitez’s hand away during their interaction, which would warrant some degree of force, the officers did not corroborate this action. Therefore, § 87(2)(b)’s self-admitted aggression cannot be credited. Lastly, § 87(2)(b)’s arrest photograph does indicate that he suffered any type of injury during his interaction with the officers (encl. D1).

§ 87(2)(g)
[Redacted]
[Redacted]

Team: _____

Investigator: _____
Signature Print Date

Supervisor: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date